

Amy Silva

From: Anthony DeSisto <tony@adlawllc.net>
Sent: Tuesday, August 24, 2021 1:33 PM
To: Amy Silva
Cc: Jeff Willis
Subject: Confidential Attorney-Client Privileged Communication

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Amy:

I'm circling back on this matter. Yes, I have had several discussions with Mr. DeAngelis on the matter. I've also read the legal memorandum that was submitted to Jeff as well as the decision in the Superior Court case, *Gardner v. Town of Charlestown Zoning Board of Review*, 2020 R.I. Super.LEXIS 105. Please accept the application. The applicant will be making legal arguments to the Council and I will be prepared for that.

Tony

On Jun 10, 2021, at 10:52 AM, Amy Silva <asilva@crmc.ri.gov> wrote:

Tony-

Do you have an update on conversations with JoeD on the Gardner app in Charlestown? Joe has indicated to us that he will not ask the Town for front setback relief and that he's been discussing with you. The application has not been accepted for review yet, as I had asked them to go to the Town for relief to meet the Variance requirements.

I have to act on this (accept or reject) soon.

-Amy

Amy Silva
Senior Environmental Scientist, CRMC
(401)-783-3370p / (401)-783-2069f
<http://www.crmc.ri.gov>



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Anthony DeSisto
Anthony DeSisto Law Associates LLC
450 Veterans Memorial Parkway
Suite 103
East Providence, Rhode Island 02914

Amanda Turco

From: asilva@crmc.ri.gov
Sent: Friday, April 30, 2021 2:35 PM
To: Amanda Turco; Lisa Turner
Subject: FW: Gardner / Sweet, Sea Lea Ave, Chas
Attachments: BOF Revised (4-8-21)Sea Lea Avenue P9 L387.pdf; CHA024.pdf; Scan narrative 04-28-2021 .pdf; SeaLea appvd OWTS-1.tif; SeaLea appvd OWTS-2.tif; SeaLea appvd OWTS-applic.tif

Requested info for 2021-02-051.

I did an event. Can one of you add to PDF?

Thanks!

Amy Silva
Senior Environmental Scientist, CRMC
(401)-783-3370p / (401)-783-2069f
<http://www.crmc.ri.gov>

From: Iliana Borisova <iborisova@frisella.com>
Sent: Friday, April 30, 2021 2:30 PM
To: asilva@crmc.ri.gov; Jeffrey Balch <jbalch@frisella.com>
Cc: 'Joseph DeAngelis' <jdeangelis@apslaw.com>; 'CJ Doyle, P.E.' <cjengine@cox.net>
Subject: RE: Gardner / Sweet, Sea Lea Ave, Chas

Hello,

Here is the additional information you requested. The Approved OWTS are .tif files, because they are too big when scanned into pdfs - let me know if this works.

Let us know if you have any further questions.

Thank you for your patience.

Iliana

From: asilva@crmc.ri.gov [<mailto:asilva@crmc.ri.gov>]
Sent: Wednesday, April 28, 2021 10:05 AM
To: Jeffrey Balch <jbalch@frisella.com>
Cc: 'Joseph DeAngelis' <jdeangelis@apslaw.com>; 'CJ Doyle, P.E.' <cjengine@cox.net>; Iliana Borisova <iborisova@frisella.com>
Subject: RE: Gardner / Sweet, Sea Lea Ave, Chas

No problem

-Amy

Amy Silva

Senior Environmental Scientist, CRMC
(401)-783-3370p / (401)-783-2069f
<http://www.crmc.ri.gov>

From: Jeffrey Balch <jbaldch@frisella.com>
Sent: Monday, April 26, 2021 4:02 PM
To: asilva@crm.ri.gov
Cc: Joseph DeAngelis (jdeangelis@apslaw.com) <jdeangelis@apslaw.com>; CJ Doyle, P.E. <cjengine@cox.net>; Iliana Borisova <iborisova@frisella.com>
Subject: Gardner / Sweet, Sea Lea Ave, Chas

Amy,

We should be ready to submit the remaining materials tomorrow. Joe DeAngelis has drafted a letter addressing the town's front setback and I am waiting on final review of Joe D's letter from CJ Doyle PE. I don't expect any changes.

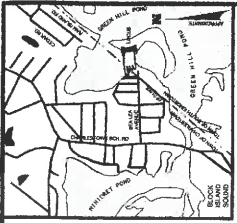
Give us another day before kicking back the application if possible.

Thanks,
Jeff

Jeffrey K. Balch
Professional Land Surveyor
Frisella-Balch & Associates
33 North Road, Suite C201
Peace Dale, RI 02879
ph: (401) 783-5949

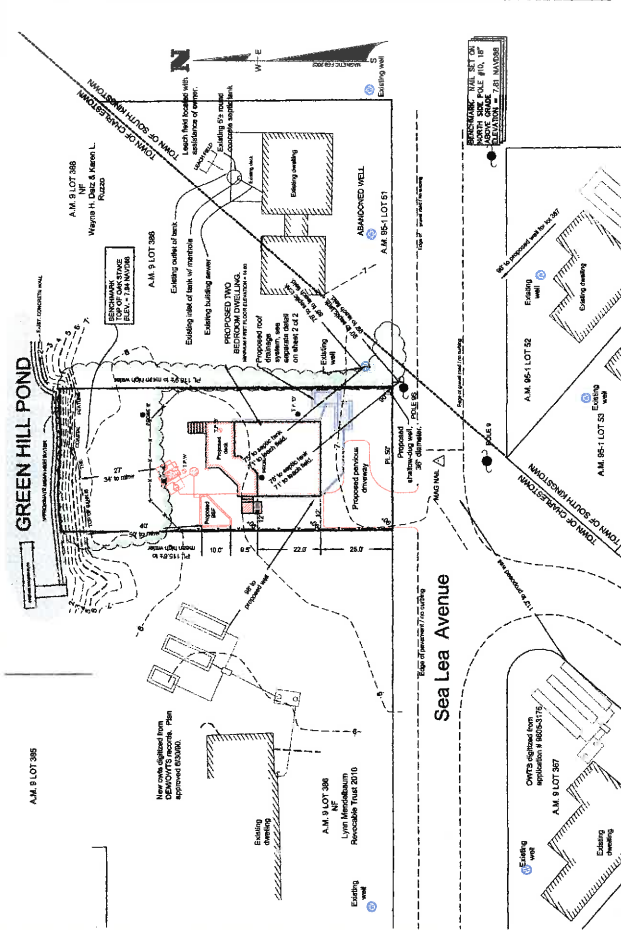
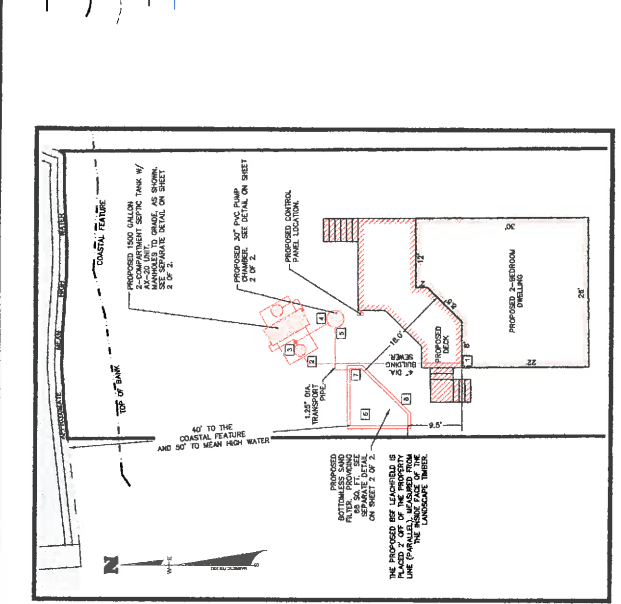


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CERTIFICATION
 This survey has been conducted and the data has been prepared to substantially conform to British Columbia Professional Land Surveyors Act, R.S.B.C. 1996, Chapter 220, and the regulations thereunder. I am a duly Licensed Professional Land Surveyor in British Columbia. My License Number is 15210. My Commission Expires on November 15, 2016. My Address is: Jeffrey K. Balch, 40 Professional Land Surveyors #100, 1100 West Broadway, Vancouver, BC V6H 1Y1. My Telephone Number is: (604) 681-8800. My Fax Number is: (604) 681-8801. My Email Address is: jbalch@jeffreylabalch.com. My Website is: www.jbalch.com.

DATE: 3/27/2014
BY: Jeffrey K. Balch
FOR: Jeffrey K. Balch, 40 Professional Land Surveyors #100, 1100 West Broadway, Vancouver, BC V6H 1Y1.



FRISELLA-BALCH & ASSOCIATES
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 TEL: (604) 681-8800
 FAX: (604) 681-8801
 WWW.FRISELLA-BALCH.COM

PROJECT: PLAN OF A PROPOSED ONSITE WASTEWATER TREATMENT SYSTEM
LOCATION: LOT 387 OF ASSESSORS MAP 9
OWNER: BRUCE GARDNER & OTHERS
ADDRESS: SEA LEA AVENUE
CITY/TOWN: CHARLESTOWN RI
DATE: JULY 26, 2016
SCALE: 1" = 20'
DRAWN BY: C. DOYLE
CHECKED BY: C. DOYLE
SHEET 1 OF 2

JEFFREY K. BALCH
 NO. 15210
 REGISTERED PROFESSIONAL LAND SURVEYOR

CAROLYN DOYLE
 NO. 5978
 REGISTERED PROFESSIONAL ENGINEER

SCHEDULE OF INVERTS

INVERT NO.	LOCATION OF INVERT	ELEVATION
1	BUILDING SEWER	4.75
2	30' DIA. PUMP CHAMBER	2.28
3	30' DIA. PEASTONED SAND FILTER	6.08
4	30' DIA. EFFLUENT MANIFOLD	7.91
5	30' DIA. MANHOLE	8.18
6	30' DIA. MANHOLE	8.38

CALCULATION OF WATER TABLE ELEVATIONS

GRADE AT TEST PIT "A"	ELEVATION
GROUND WATER DEPTH	= 3'
WATER TABLE ELEVATION	= 5.08
GROUND WATER DEPTH	= 3'
WATER TABLE ELEVATION	= 5.78
GROUND WATER DEPTH	= 3'
WATER TABLE ELEVATION	= 6.71

LIST OF PLAN NOTES:
 1. REFER TO ASSASSORS MAP 9 FOR THE LOCATION OF THE PROPOSED OWTS.
 2. REFER TO THE PLAN FOR THE LOCATION OF THE PROPOSED OWTS.
 3. REFER TO THE PLAN FOR THE LOCATION OF THE PROPOSED OWTS.
 4. REFER TO THE PLAN FOR THE LOCATION OF THE PROPOSED OWTS.



SOIL STRATA "A"
 GROUND ELEVATION = 8.48
 WATER TABLE ELEVATION = 5.08

SOIL STRATA "B"
 GROUND ELEVATION = 8.48
 WATER TABLE ELEVATION = 5.08

SCHEDULE OF INSPECTIONS:
 1. A PRE-CONSTRUCTION INSPECTION SHALL BE CONDUCTED BY C.J. DOYLE P.E. PRIOR TO CONSTRUCTION.
 2. A POST-CONSTRUCTION INSPECTION SHALL BE CONDUCTED BY C.J. DOYLE P.E. AFTER COMPLETION OF THE OWTS.
 3. THE CONTRACTOR SHALL PROVIDE ACCESS TO ALL UTILITIES AND SERVICES.
 4. THE CONTRACTOR SHALL PROVIDE ACCESS TO ALL UTILITIES AND SERVICES.
 5. THE CONTRACTOR SHALL PROVIDE ACCESS TO ALL UTILITIES AND SERVICES.

CONTRACTOR SHALL PROVIDE THE FOLLOWING:
 1. PROVIDE ACCESS TO ALL UTILITIES AND SERVICES.
 2. PROVIDE ACCESS TO ALL UTILITIES AND SERVICES.
 3. PROVIDE ACCESS TO ALL UTILITIES AND SERVICES.
 4. PROVIDE ACCESS TO ALL UTILITIES AND SERVICES.

PROPOSED OWTS:
 THE PROPOSED OWTS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE BC OWTS REGULATIONS AND THE BC OWTS DESIGN MANUAL. THE OWTS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE BC OWTS REGULATIONS AND THE BC OWTS DESIGN MANUAL.

BOTTOMLESS SAND FILTER DESIGN:
 SAND: 4.50 GAL/PAY
 LEACHING RATE: 4.50 GAL/PAY
 SAND RESERVE: 4.50 GAL/PAY
 TOTAL SAND FLOW: 4.50 GAL/PAY
 SAND RESERVE: 4.50 GAL/PAY
 TOTAL SAND FLOW: 4.50 GAL/PAY

GENERAL:
 THE CONTRACTOR SHALL MAINTAIN THE EXISTING UTILITIES AND SERVICES. THE CONTRACTOR SHALL MAINTAIN THE EXISTING UTILITIES AND SERVICES. THE CONTRACTOR SHALL MAINTAIN THE EXISTING UTILITIES AND SERVICES.

OWTS COMPONENTS:
 1. 30' DIA. PEASTONED SAND FILTER (REGULATIVE TANK)
 2. 30' DIA. PUMP CHAMBER
 3. 30' DIA. MANHOLE
 4. 30' DIA. MANHOLE
 5. 30' DIA. MANHOLE

STRUCTURE:
 ALL OWTS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE BC OWTS REGULATIONS AND THE BC OWTS DESIGN MANUAL. ALL OWTS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE BC OWTS REGULATIONS AND THE BC OWTS DESIGN MANUAL.

WATER SUPPLY:
 THE CONTRACTOR SHALL PROVIDE ACCESS TO ALL UTILITIES AND SERVICES. THE CONTRACTOR SHALL PROVIDE ACCESS TO ALL UTILITIES AND SERVICES. THE CONTRACTOR SHALL PROVIDE ACCESS TO ALL UTILITIES AND SERVICES.

LEACH OR BOLLER REMOVAL:
 THE CONTRACTOR SHALL PROVIDE ACCESS TO ALL UTILITIES AND SERVICES. THE CONTRACTOR SHALL PROVIDE ACCESS TO ALL UTILITIES AND SERVICES. THE CONTRACTOR SHALL PROVIDE ACCESS TO ALL UTILITIES AND SERVICES.

NOTICE TO CONTRACTORS OR BIDDERS
 THE BIDDERS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL GOVERNMENT. THE BIDDERS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL GOVERNMENT.

GRAPHICAL SCALE: 1" = 20'

TO: Coastal Resources Management Council
4808 Tower Hill Road Suite 3
Wakefield, RI 02879
Phone: (401) 783-3370 / Fax: (401) 783-2069

ORIGINAL



FROM: Building Official

DATE: 02/10/2021 Rev. 4/8/21

SUBJ: Application of: Bruce Garner & Charles Sweet

Location: Charlestown, RI

Address: Sea Lea Avenue

Plat(s): 9

Lot(s): 387

To Construct: a two bedroom single family dwelling and OWTS

I hereby certify that I have reviewed foundation plan(s).

 plan(s) for entire structure

site plans

Titled: Plan of a Proposed Onsite Wastewater Treatment System



Date of Plan (last revision): July 26, 2016 Town Variance 7/19/2018 Signed 3/18/2021

N/A and find that the issuance of a local building permit is not required as in accordance with Section of the Rhode Island State Building Code.

JW and find that the issuance of a local building permit is required. I hereby certify that this permit shall be issued once the applicant demonstrates that the proposed construction/activity fully conforms to the applicable requirements of the RISBC, and all other local, state and federal regulations are met.

JW and find that a Septic System Suitability Determination (SSD) must be obtained from the RI Dept. of Environmental Management.

N/A and find that a Septic System Suitability Determination (SSD) need not be obtained from the RI Dept. of Environmental Management.

N/A and find NO structural or non-structural fill is proposed in a FEMA-designated V-Zone or Coastal A-zone.

JW and find that the proposed fill is considered non-structural fill and meets FEMA NFIP guidelines.
No fill is proposed in accordance with site plan dated July 26, 2016

JW and find that said plans conform with all elements of the zoning ordinance, and that if said plans require zoning board approval, that the applicant has secured such approval and that the requisite appeal period has passed with no appeal filed or appeal is final. The Zoning Board approval shall expire on:

Joseph L. Warner Jr. 02/10/2021 Rev 4/8/21
Building Official's Signature Date

JW and find that said plans conform with all elements of the zoning ordinance, and that if said plans require zoning board approval, that the applicant has secured such approval and that the requisite appeal period has passed with no appeal filed or appeal is final.

Joseph L. Warner Jr. 02/10/2021 Rev. 4/8/21
Zoning Officer's Signature Date



RI CRMC COASTAL HAZARD APPLICATION WORKSHEET

APPLICANT NAME: BRUCE GARDNER AND CHARLES A. SWEET REVOCABLE TRUST

PROJECT SITE ADDRESS: SEA LEA AVENUE, CHARLESTOWN

STEP 1. PROJECT DESIGN LIFE

- A. For properties in a FEMA-designated A or X Zone, provide the first floor elevation (FFE) of the proposed structure referenced to NAVD88, **OR** For properties in a FEMA-designated V or Coastal A Zone, please provide the elevation of the lowest horizontal structural member (LHSM) referenced to NAVD88. FFE 14 ft
OR
LHSM elevation ft
- B. How long do you want your project to last? Identify the expected design life for the project (CRMC recommends a minimum of 30 years) Design Life: 30 yrs
- C. Add the number of years you identified in 1B to the current year. (For example, if you are completing this form in the year 2020, and you want your project to last 30 years, your design life year will be 2050.) Design Life Year: 2051
- D. CHECK beneath the sea level rise (SLR) projection that matches or comes closest to project design life year.

Year	2020	2030	2040	2050	2060	2070	2080	2090	2100
SLR	1.05	1.87	2.33	3.25	4.20	5.35	6.69	8.14	9.61
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Source: Sea Level Rise (SLR) Projections (Feb. 2017). NOAA High Curve, 84% Confidence Interval, Newport, RI Tide Gauge. All values are expressed in feet relative to NAVD88. <http://www.corpscimate.us/forces/curves.cfm>

NOTE: The STORMTOOLS sea level rise scenarios depict how high the water will be above the average height of the daily high tide over the 19-year period between 1983 and 2001. There have been between 4 and 5 inches of sea level rise in Rhode Island since then. The higher modeled water level accounts for the uncertainties in ice sheet and ocean dynamics.

STEP 2. SITE ASSESSMENT

- A. Open RICRMC Coastal Hazard Mapping Tool. Following the tutorial along the left side of the screen, enter the project site address and turn on the sea level layer closest to the number you circled in 1D.
- B. ENTER the STORMTOOLS SLR map layer closest to the SLR value you checked in Step 1D above. If the value falls between the available STORMTOOLS SLR map layers, round up to the closest of these sea level rise (SLR) numbers: 1ft, 2ft, 3ft, 5ft, 7ft, 10ft, or 12ft 3 ft
- C. Does the STORMTOOLS SLR map layer you circled above expose your project site to future tidal inundation? CHECK YES or NO YES
 NO
- D. List any roads or access routes that are potentially inundated from SLR. To do this, ZOOM OUT from your project location, change BASEMAP on the viewer to "street view" – see Step 2A.

FOURTH ST, WALL ST

***Please be advised that CRMC staff may also review the implications of sea level rise in combination with nuisance storm flooding and discuss these potential project concerns with the applicant. Nuisance flooding impacts may be viewed in STORMTOOLS [here](#).*

STEP 3. STORMTOOLS DESIGN ELEVATION (SDE)

- A. Based on the project location, CHECK the SDE Viewer for your site, and open the corresponding tab in Mapping Tool:
 South Coast SDE Viewer: Napatree to Pt. Judith Narragansett Bay SDE Viewer: North and East of Pt. Judith
- B. Follow the tutorial included along the left panels of the viewer to enter the address of your project site. Select the tab across the top that corresponds to the sea level rise projection you identified in STEP 1
- C. Click on the map at project site to identify STORMTOOLS Design Elevation (SDE) from the pop up box. Enter the SDE value: 19.9 ft

RI CRMC COASTAL HAZARD APPLICATION WORKSHEET

STEP 4. SHORELINE CHANGE

A. Using the CRMC Shoreline Change maps, indicate the transect number closest to your site, and erosion rate listed for that transect. Transect Number: N/A
Erosion Rate: N/A ft/year

B. CHECK below the Projected Erosion Rate that corresponds to the design life you identified above.

Year	2050	2060	2070	2080	2090	2100
Projected Future Erosion Multiplier	1.34	1.45	1.57	1.70	1.84	2.00
	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Source: Projected Shoreline Change Rate multipliers. (Oakley et al., 2016)

C. COMPLETE EROSION SETBACK CALCULATION:

Historic shoreline change rate, STEP 4A	Design Life, STEP 1C	Projected Future Erosion Multiplier, STEP 4B	Erosion Setback (ft) 4A x 1C x 4B
N/A	X 2051	X 1.34	= N/A

NOTE: Setbacks are required per the CRMC Red Book, Section 1.1.9. A minimum setback of 50-feet is required, but a greater setback may be necessary and/or desirable based on this analysis.

STEP 5. CERl & OTHER SITE CONSIDERATIONS

A. If you live in a community where a Coastal Environmental Risk Index (CERl) has been completed (Barrington, Bristol, Charlestown, Narragansett, South Kingstown, Warren, Warwick, Westerly), CHECK the level of projected damage to your location, as indicated on the map that corresponds to the design life identified in STEP 1.

CERl Level: Moderate High Severe Extreme Inundated by 2100 Not applicable

B. Consider and discuss with your design consultant other forces or factors that might impact the development, such as coastal habitats, shoreline features, public access, wastewater, storm water, depth to water table/groundwater dynamics, saltwater intrusion, or other issues not listed above. In addition, pressure from rising sea levels will result in rising subsurface groundwater levels ultimately effecting wells and septic systems.

STEP 6. LARGE PROJECTS

This step is for Large Projects and Subdivisions only, six (6) or more units, as defined by the CRMC Red Book Section 1.1.6.(1)(f). This step may be skipped for other projects.

A. Use the Sea Level Affecting Marshes Model (SLAMM) Maps to assess potential impacts to large projects and subdivisions from salt marsh migration resulting from projected sea level rise. CRMC SLAMM maps can be accessed [here](#). The CRMC recommends using the 5-foot SLR projection within SLAMM to assess future potential project impacts on migrating marshes. Does the SLAMM map that corresponds to the design life you identified in STEP 1 expose your project site to future salt marsh migration? CHECK YES or NO YES NO

STEP 7: DESIGN EVALUATION

A. Using Chapter 7 of the RI Shoreline Change SAMP as a guide, investigate mitigation options for the exposure identified above and include that in the final application.

This fully completed Coastal Hazard Application Guidance worksheet must accompany the application. If you are a design or engineering professional, please print and sign here that you have discussed the findings of this worksheet with the Owner.

DESIGN/ENGINEER SIGNATURE: _____

DATE: _____

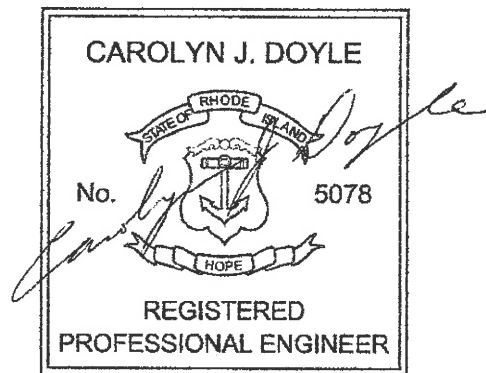
OWNER'S SIGNATURE: _____

DATE: 4-9-21





SECTION 1.1.7-VARIANCE NARRATIVE
FOR SECTIONS
1.1.9 COASTAL SETBACKS & 1.1.11 COASTAL BUFFERS
OF THE
RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM
FOR
PROPOSED DWELLING
LOCATED ON MAP 9, LOT 387, SEA LEA AVENUE
IN THE TOWN OF CHARLESTOWN, RHODE ISLAND
OWNED BY/PREPARED FOR
BRUCE W. GARDNER & CHARLES A SWEET REV. TRUST



PREPARED BY
C.J. DOYLE, P.E.
PO BOX 1161
HOPE VALLEY, RI 02832
OFFICE: 1122 MAIN STREET, WYOMING, RI
(401) 491-9530

MARCH 9, 2021; Rev 3/24/2021, Rev. 4/28/2021

THE FOLLOWING IS IN RESPONSE TO THE REQUIREMENTS OF SECTION 1.1.7 AND 1.1.9 OF THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PLAN.

Project Description

This parcel of developed land is 5,805 square feet in size and is currently undeveloped. The applicant is proposing to construct a 2-bedroom, 716 s.f. house with a 224 s.f. open deck. The proposed house will have a full second story and will be elevated to meet the required FEMA flood elevation. An Onsite Wastewater Treatment System (OWTS) has been designed and ultimately approved by the Rhode Island Department of Environmental Management (RIDEM) for the site. Electrical, cable TV and phone services are available in Sea Lea Avenue. Water will be available from the proposed on-site well. Stormwater management requirements for an individual single-family residential lot development have been met with the subsurface infiltration system shown on the plans attached to this submittal.

The inland edge of the coastal feature is the top of coastal bank giving way to a coastal shoreline associated with the salt pond, i.e. Green Hill Pond, a type II water. The coastal feature and pond abut the lot to the north. The closest approach of the proposed house, at the deck stair, is 32' from the coastal feature. A deck is proposed on the northerly side of the house and the OWTS on the northwesterly side of the house. The OWTS will be a minimum of 27' to the coastal feature (as measured to the septic tank). Since the 50' CRMC setback required for this lot is not met by the proposed project, a variance is required from CRMC.

A memo prepared by the project attorney on April 22, 2021 is attached to summarize the pertinent approval efforts to date on this project. This memo is referenced herein as appropriate and is attached for reference.

Section 1.1.10 Coastal Buffer Zones

- The 25' buffer zone is met by the proposed project.



Section 1.1.9 Setbacks

C. The minimum distance of a setback shall be not less than 30 times the calculated average annual erosion rate for less than four dwellings units. Setbacks shall extend a minimum of either fifty (50) feet from the inland boundary of the coastal feature or twenty-five (25) feet inland of the edge of a Coastal Buffer Zone, whichever is further landward.

RESPONSE: Based on a total lot area of 5,805 s.f. adjacent to a Type II water, the 50' minimum setback (25' buffer zone & 25' setback) is applicable to the proposed project. Reference is made to the enclosed plan for details pertaining to the site. The proposed building is located a minimum of 32' from the existing inland edge of the coastal feature as measured from the closest approach of the proposed house (at the corner of the access stair to

the deck) and the OWTS is a minimum of 27' from the existing inland edge of the coastal feature. A variance of 46% of the required 50' setback to a total of 27' (25' buffer and 2' setback) is requested for the reasons listed below.

- A minimum setback of 27.0' is proposed for the site. The 46.0% reduction (23.0') is requested for the lot. The parcel is 50.0' in width as measured along Sea Lea Avenue on the southerly end of the lot and approximately 115.6' in length, abutting Green Hill Pond on the north end of the lot. Due to the narrow width of the lot and the presence of coastal feature to the north of the lot, there is little available space for any improvements to be constructed. Only 2,946 s.f. of the lot is outside the coastal feature and 50' from the coastal feature. Therefore, a variance to the 50' setback distance is required.
- The required Town of Charlestown setbacks from the property lines are: 30' in the front, 38' in the rear, and 12' on the sides. No zoning relief has been obtained from the Town of Charlestown since the proposed house as located on the proposed site plan is consistent with the setback from the street of the abutters' houses. The house for the abutter to the east is approximately 20' from the front property line and house for the abutter to the west is approximately 39' from the front property line. We note that both the abutters to the east and west of the site have considerably larger lots (approx. 0.36 acres in size for the westerly abutter and 0.23 acres for the easterly abutter whose lot is approximately split in half by the Charlestown/South Kingstown town line). The minimal side yard setback of 12' leaves little room to ask for any relief in that direction and still provide for access to the rear yard or for maintenance activities on the proposed house.
- The proposed 2-bedroom house is modest in size with 716 s.f. of footprint and 224 s.f. of open deck. The house will be elevated to meet the FEMA flood zone requirements and will consist of two stories of living space.
- The access to the site will be provided by a pervious driveway of 474 s.f. (area within the property lines of the lot) from Sea Lea Avenue. The driveway as configured allows for a maximum of two cars to be parked within the property lines of the lot.
- The limit of disturbance as shown on the site plan is applicable to the proposed construction of the proposed building. The limit of disturbance is consistent with the existing vegetated area such that minimal vegetation needs to be removed to install the septic tank. The 25' buffer zone as approved in CRMC Assent #2014-07-094 must be retained in a naturally vegetated state.
- The 2' setback provided will allow for the continued maintenance of the OWTS following construction as 2' on the north side of the tank is adequate for a person to access the septic tank and AX-20 filter or to use a weedwacker to cut grass.
- The 50' required setback from the septic tank and leach field to the coastal feature cannot be met. 27' to the septic tank and 40' to the bottomless sand filter type of leach field has been approved by DEM in lieu of the 150' setback required at the time of DEM OWTS submission.
- The limit of disturbance as shown on the site plan is applicable to the proposed construction of the proposed building. The limit of disturbance is consistent with the existing vegetated area such that minimal vegetation needs to be removed to install the septic tank.



**Section 1.1.7.
Variances**

(A) *Applicants desiring a variance from a standard shall make such requests in writing and address the six criteria listed below in writing. The application shall then be granted an assent only if the council finds that the following six criteria are met:*

- 1) *The proposed alterations conform with applicable goals and policies in Parts Two and Three of the Coastal Resources Management Program.*

RESPONSE: True. The proposed residence is located within a FEMA flood zone AE with a corresponding elevation of 13. The building is proposed to be in accordance with State Building Code and FEMA flood construction, with a first at elevation 14.0. All utilities will be above the required flood elevation. No grading is proposed as shown on the enclosed site plan. Pervious parking will be located to the south of the house along with the proposed subsurface infiltration field for roof drainage as required by CRMC. Minimal clearing is required on the site to accommodate the proposed septic tank. Since the proposed house will be modest in size, located as far from the coastal feature as possible while providing on-site parking for a maximum of two cars and a roof drainage system, we do not foresee any degradation of the scenic or ecological values of the site.

- 2) *The proposed alteration will not result in significant adverse environmental impacts or use conflicts, including but not limited to, taking into account cumulative impacts.*

RESPONSE: True. The proposed construction is to take place as far as possible from the coastal feature while providing a workable project for the owners. The proposed modest sized home will be constructed in compliance with FEMA, state building and local codes. The proposed OWTS as approved by DEM requires a composting toilet for the treatment of the black water and a denitrification system consisting of an Advantex AX-20, ultraviolet disinfection before discharge into a bottomless sand filter for treatment of the gray water. The appropriate variances were sought from DEM beginning in 2007 and approved by DEM (after entering into a consent agreement with the owners) in December of 2016. During the design/approval process with DEM, the owner participated in the cost of upgrading a substandard system located at 166 Ram Island Road and scaled back the development to a 2-bedroom house. \$5,000 was made available by the applicant to the owner of 166 Ram Island Road to upgrade the off-site OWTS. Since a composting toilet will be utilized for the black water, no nitrates will be discharged to the site from the black water portion of the waste stream from the proposed house. Minimal nitrates are

associated with the gray water following treatment by the Advantex AX-20 denitrification system. Therefore, the proposed house construction in this location shown on the site plan will not result in significant adverse environmental impact or use conflict. A letter from the Historical Preservation & Heritage Commission dated 12/20/2016 and part of the CRMC file #2016-12-031 states that there will be no effect on significant cultural resources as a result of the proposed project. Construction impacts will be minimized by placement of the erosion control around the perimeter of the area of disturbance prior to commencement of the house construction. Erosion control will remain in place until construction is complete and the disturbed areas are stabilized with vegetation.

- 3) *Due to conditions at the site in question, the applicable standard cannot be met.*

RESPONSE: True. As previously stated under Section 1.1.9 Setbacks, the available area for development on the site is significantly constrained due to the size and shape of the lot. We have sought to limit the extent of the proposed construction and chosen the location of the house and appurtenances carefully to minimize any impact to the environment. The appropriate variances have been sought and obtained from DEM for the OWTS. An offsite substandard OWTS has been designed, approved and installed to further reduce the nitrate loading to the pond from this area of Charlestown. Therefore, the required applicable standards cannot be met due to the particular site conditions.

- 4) *The modification requested by the applicant is the minimum variance to the applicable standard necessary to allow a reasonable alteration or use of the site.*

RESPONSE: True. The applicant is proposing a modest sized 2-bedroom house and associated deck which are the minimum necessary to make the project viable for them. The proposed structure has been located as far from the coastal feature as possible while providing a pervious parking area, roof drainage system and proposed well to be located on the south side of the proposed house. Given the required elements of off-street parking and roof drainage infiltration, there is little space remaining in the front of the lot to allow for a reduction in the setback from the front property line. The drive/parking area consists of two portions: a north/south portion extends northerly 24' from the front property line into the site and is 12' wide and an east/west portion that is approximately 9' wide by 18' long, an area large enough to park one car. However, the car parked in the 9' x 18' area would not be able to exit the site unless there is no car in the section of the drive aligned north/south. Vehicular traffic on the site will be constrained due to the limited area between the street and the house. As shown the driveway ends approximately 6' south of the proposed house. This will allow for pedestrian traffic to safely exit the car to walk around and enter the home. Due to safety issue both to pedestrians and the structure of the proposed house we do not recommend moving the house closer to the driveway. Immediately adjacent to the driveway to the east is the subsurface stormwater drainage system proposed for the roof of



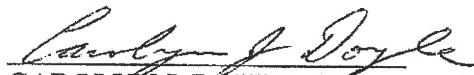
the building. Associated piping is located between the house and the parking area. Due to the modest size of the proposed home and the fact that it has been reduced to a 2-bedroom capacity, the requested variance is the minimum necessary to allow reasonable use of the site. No attempt was made to seek relief from the town for the front setback since there is no remaining unencumbered space left that would allow the proposed home to be located closer to the front property line. Furthermore, the fourteen years required to get the necessary approvals to present this project to CRMC has been a significant hardship to the owners (reference attached memo by the project attorney).

- 5) *The requested variance to the applicable standard is not due to any prior action of the applicant's predecessors in title.*

RESPONSE: True. According to the tax assessor's field card, no date is available as to when the lot was created. The requested variance is due to the unique characteristics of the lot and not due to any action of the current owner or prior owners. Therefore, no prior actions of the current owner or prior owners of this particular parcel are the cause for the requested variance at the site.

- 6) *Due to the conditions of the site in question, the standard will cause the applicant an undue hardship.*

RESPONSE: True. The current owner proposes to build a modest home with appurtenances as shown on the enclosed site plan. The proposed construction on the site has been kept to a minimum while meeting state and local regulations to the extent possible. The client seeks to maintain the site parcel and other parcels. The denial of the requested variances will cause the applicant undue hardship since they will be unable to develop the subject parcel to meet their needs. The applicant has spent many years of seeking approvals from the DEM for the OWTS and Town of Charlestown for a special use permit, as required before seeking approval from the CRMC.


CAROLYN J. DOYLE, P.E.
Reg. Professional Engineer

Memorandum



To: CRMC
From: Joseph DeAngelis, Esq. and Christine M. DiBiase, Esq.
Date: April 22, 2021
Re: Sea Lea Ave, Charlestown, Rhode Island

The permitting process for the proposed residential development on the property located at Sea Lea Avenue, Charlestown, Rhode Island, Assessor’s Map 9, Lot 387 (the “Property”) has impressively spanned over the course of fourteen years. In 2007, the property owners, Bruce Gardner and Charles Sweet (collectively the “Applicants”) were required to obtain variances from the Rhode Island Department of Environmental Management for the location of the proposed Onsite Wastewater Treatment System (“OWTS”). Specifically, due to size and configuration of the Property, the OWTS could only be located within two feet of the property line, seventy-one feet from a nearby well, and fifty feet from Green Hill Pond, which did not meet the dimensional standards under DEM’s regulations. Following an initial denial of the application, an appeal to the DEM Administrative Adjudication Division, and an appeal to the Rhode Island Superior Court, the Applicants and DEM entered into a Consent Agreement in 2016 whereby DEM approved the variances requested.

Thereafter, the Applicants were required to seek a special use permit from the Town of Charlestown Zoning Board of Review because the proposed OWTS was within one hundred feet of a boundary of fresh water or coastal wetland and within the one hundred year flood hazard boundary. Between the winter of 2018 and the spring of 2019, the Zoning Board of Review held four contentious hearings on the matter and ultimately voted to deny the Applicants’ requested special use permit. The Applicants appealed the Zoning Board of Review’s decision to the Rhode Island Superior Court. On December 18, 2020, the Rhode Island Superior Court reversed the denial and granted the special use permit.

On February 10, 2021, in what was to be the last leg of the permitting process, the Applicants submitted its application for Assent with CRMC (the “CRMC Application”). Following review of the CRMC Application, CRMC determined that the Applicants need to obtain a setback variance from the Town of Charlestown Zoning Board of Review.

The Rhode Island Supreme Court has held that petitioners have a right of final adjudication of their petition within a reasonable period of time and that a remand of a matter could be prejudicial. *See Easton’s Point Association, Inc. v. CRMC*, 559 A.2d 633, 636 (1989) (court held that a remand would not provide decisive new information and would prejudice [the petitioners’] right to a final adjudication of their petition within a reasonable period); *see also Sakonnet Rogers*,

Inc. v. CRMC, 536 A.2d 893 (R.I. 1988) (court denied remand to CRMC and allowed petitioner to proceed with construction of dwelling reasoning that it was seven years since the application was filed and a remand would not be in the best interest of justice).

Along the same vein of reasoning as in *Easton's Point Association* and *Sakonnet Rogers, Inc.*, the Applicants are entitled to a final resolution of their permitting process that commenced *fourteen* years ago. Throughout the fourteen years, the Applicants have been before various applicable state and municipal permitting authorities, including the Town of Charlestown Zoning Board of Review, which resulted in contentious and hostile hearings and an appeal to the Rhode Island Superior Court. The Applicants strongly urge CRMC to consider the prejudicial ramifications of requiring the Applicants to return to the Town of Charlestown Zoning Board of Review to seek additional relief. The Applicants respectfully argue that requiring the Applicants to do so would not be in the best interest of fairness and justice and would cause an intolerable delay in the already lengthy permitting process. *See Ratcliffe v. CRMC*, 584 A.2d 1107, 111 (“If seven years was a long wait in *Sakonnet Rodgers*, the [petitioners’] wait has been an extraordinarily and unjustifiably long wait...[f]ourteen years have come and gone. At this point any further delay would be intolerable.”). Accordingly, any additional relief required in this matter should be within CRMC’s authority and the Applicants should not be required to reappear before the Town of Charlestown Zoning Board of Review.



Amanda Turco

From: asilva@crmc.ri.gov
Sent: Wednesday, April 21, 2021 1:21 PM
To: Amanda Turco
Subject: FW: gardner application SEA Lea Avenue Charlestown

Newest email for 2021-02-051.

Thanks!

Amy Silva
Senior Environmental Scientist, CRMC
(401)-783-3370p / (401)-783-2069f
<http://www.crmc.ri.gov>

From: asilva@crmc.ri.gov <asilva@crmc.ri.gov>
Sent: Wednesday, April 21, 2021 1:20 PM
To: 'sealea@sweet313.com' <sealea@sweet313.com>; 'cjengine@cox.net' <cjengine@cox.net>; 'iborisova@frisella.com' <iborisova@frisella.com>; 'jdeangelis@apslaw.com' <jdeangelis@apslaw.com>; 'Jeffrey Balch' <jbalch@frisella.com>
Subject: FW: gardner application SEA Lea Avenue Charlestown

Folks:

Still no update on this.

There's a bunch of information that was requested back on March 23. If I don't receive acceptable information within the next week, I will have to send this deficient again.

From: asilva@crmc.ri.gov <asilva@crmc.ri.gov>

Sent: Tuesday, March 23, 2021 11:05 AM

To: 'sealea@sweet313.com' <sealea@sweet313.com>; 'cjd' <cjengine@cox.net>; 'Jeff Balch' <jbalch@frisella.com>

Subject: 2021-02-051/Gardner

CJ/Jeff-

Got this resubmission in. Still need the required CHA Worksheet. The BO Sign off is for a different plan than I have and needs to be updated. The plan I've got it last revised 7/19/2018. The BO form references a 2016 plan.

Also don't have the approved OWTS plan. The plan I have is titled Plan of Proposed OWTS but does not have the DEM Approval Stamp.

The path on the plan extends onto the Coastal Feature. No vegetative alteration of the Coastal feature is allowed. Path must stop at the feature.

1

Looks like no revisions/minimal revisions were made between this and the deficiency. Please address how 2' setback between the OWTS and vegetated buffer is sufficient – this is narrower than a typical lawnmower and will be nearly impossible to maintain. CRMC typical minimum setback is 10'.

There is no grading shown for the installation of the OWTS and the OWTS extends beyond the LOD. Please address and revise accordingly.

Did the applicant request front setback relief? Looks like the dwelling is at the standard front setback.

-Amy

-Amy

Amy Silva
Senior Environmental Scientist, CRMC
(401)-783-3370p / (401)-783-2069f
<http://www.crmc.ri.gov>

From: asilva@crmc.ri.gov <asilva@crmc.ri.gov>

Sent: Friday, April 9, 2021 12:50 PM

To: 'Jeffrey Balch' <jbalch@frisella.com>; Jeff Willis <jwillis@crmc.ri.gov>

Cc: 'sealea@sweet313.com' <sealea@sweet313.com>; 'cjd' <cjengine@cox.net>; 'Iliana Borisova' <iborisova@frisella.com>; 'Joseph DeAngelis (jdeangelis@apslaw.com)' <jdeangelis@apslaw.com>

Subject: FW: gardner application SEA Lea Avenue Charlestown

Jeff-
Joe DeAngelis got a reply from Jeff Willis on March 30, see below. The Variance Criteria submitted did not make any mention of asking for/being denied front setback relief. (Joe's email only mentions issues with the OWTS, not front setback)/.

I'd like that addressed – relief from Town setbacks is a common way to reduce a CRMC Variance.

-Amy

Amy Silva
Senior Environmental Scientist, CRMC
(401)-783-3370p / (401)-783-2069f
<http://www.crmc.ri.gov>

From: DeAngelis, Joseph [<mailto:JDeAngelis@apslaw.com>]
Sent: Wednesday, March 31, 2021 9:48 AM
To: 'Jeff Willis' <jwillis@crmcc.ri.gov>
Subject: RE: gardner application SEA Lea Avenue Charlestown

Thx jeff.

From: Jeff Willis [<mailto:jwillis@crmcc.ri.gov>]
Sent: Tuesday, March 30, 2021 11:47 AM
To: DeAngelis, Joseph <JDeAngelis@apslaw.com>; 'Anthony DeSisto' <tony@adlawllc.net>
Subject: RE: gardner application SEA Lea Avenue Charlestown

Joe – I don't see that Staff *required* going back to the Town. It asked the applicant to address the RI CRMP Variance Criteria, where one of which does point to need to obviate CRMC variances if the municipality can grant a variance of their own.

Thanks,
Jeff

From: DeAngelis, Joseph [<mailto:JDeAngelis@apslaw.com>]
Sent: Tuesday, March 30, 2021 8:58 AM
To: (jwillis@crmcc.ri.gov) <jwillis@crmcc.ri.gov>; 'Anthony DeSisto' <tony@adlawllc.net>
Subject: gardner application SEA Lea Avenue Charlestown

Jeff and Tony

I will try to be short with this. About 14 years ago, Joe Frisella asked me to assist on a small house project. RIDEM had denied his owts application. We appealed and after three days of hearings at the Administrative Tribunal offices, the hearing officer in a lengthy decision reversed the denial. At that time, the process allowed the Director to reverse the hearing officer even though the Director did not attend or take any part in the evidentiary process. (Because of the actions by Mr Sullivan in this case, the legislature removed the Director from the appeal process.) We appealed and Superior Court Justice Matos reversed the Director's decision. Eventually after years of negotiation, RIDEM approved the owts with extensive safeguards.

The Town of Charlestown has a nefarious provision in its zoning code that requires a special use permit for an owts within 100 feet of water. At four hearings over a span of six months, the zoning board by a vote of 3 to 2 approved the permit. However 4 votes are required. We again appealed and Justice Carter again ruled in our favor reversing the adverse decision of the zoning board.

Finally, we filed our application with CRMC. That application has been returned with instructions to seek a front yard variance from the same Zoning board. Without question, it will be denied most likely by the same two individuals who sit on the board. Gentlemen, it has been 14 years, and as Tony is well aware, there are a number of Supreme Court cases where the court has said "enough is enough." To return to the zoning board will add another 2 or 3 years to this process. I would be happy to provide all of the decisions and rulings by the court and the hearing officer if you desire. Please give me a call after you consider the history of this matter. 401 338 8800

JOSEPH DEANGELIS, ESQ.

[V-CARD](#) | [BIO](#) | [WEBSITE](#) | JDEANGELIS@APSLAW.COM

One Citizens Plaza, 8th Floor, Providence RI 02903

401.274.7200 | fax 401.351.4607 | cell 401.338.8800



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Amanda Turco

From: asilva@crmc.ri.gov
Sent: Tuesday, April 6, 2021 1:41 PM
To: Amanda Turco
Subject: FW: 2021-02-051/Gardner

For 2021-02-051 please.

Thanks!

Amy Silva
Senior Environmental Scientist, CRMC
(401)-783-3370p/(401)-783-2069f
<http://www.crmc.ri.gov>

From: asilva@crmc.ri.gov <asilva@crmc.ri.gov>
Sent: Tuesday, April 6, 2021 1:40 PM
To: 'sealea@sweet313.com' <sealea@sweet313.com>; 'cjd' <cjengine@cox.net>; 'Jeff Balch' <jbalch@frisella.com>
Subject: FW: 2021-02-051/Gardner

CJ & Jeff-
No response to this request yet. I'm going to have to return the package deficient soon.

Any update?

Amy

Amy Silva
Senior Environmental Scientist, CRMC
(401)-783-3370p/(401)-783-2069f
<http://www.crmc.ri.gov>

From: asilva@crmc.ri.gov <asilva@crmc.ri.gov>
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